

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 10, 2004, Work Session**

AGENDA ITEM NO.: 6

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Adelphia Cable TV Franchise Renewal Update**

RECOMMENDATION: None.

SUMMARY: The attached white paper provides a basic overview of the cable television franchise renewal process, and provides an update on the status of Adelphia's franchise renewal in Lynchburg. Staff will be available to answer questions and receive feedback from Council during your work session.

PRIOR ACTION(S): The original franchise was due to expire in March, 2003. City Council has granted extensions to the franchise twice: one twelve month extension to March, 2004, and a second extension to December 31, 2004. The following needs assessments have also been performed:

City & Schools Staff	November, 2000
Public Forum	April, 2001
Citizen Survey	July, 2001
Technical Evaluation	February, 2002
Financial Evaluation	June, 2002
City & Schools Staff	March, 2004
Public Forum	March, 2004

FISCAL IMPACT: None.

CONTACT(S): Mike Goetz, Director – Information Technology
455-6002

ATTACHMENT(S): Paper entitled "Adelphia Cable Television Franchise Renewal"

REVIEWED BY: lkp

ADELPHIA CABLE TELEVISION FRANCHISE RENEWAL

July, 2004

I. Introduction

This paper is intended to provide a basic overview of cable television (CATV) franchising processes and regulation, as well as provide a status of Adelphia's franchise renewal in Lynchburg.

II. Basic Facts About Cable Television Regulation

Federal Law

Cable television regulation is primarily governed by laws passed by Congress in 1984, 1992, and 1996, with subsequent administration and rule-making by the Federal Communications Commission (FCC). These laws and rules were intended to progressively move the cable industry to a more pro-competitive, deregulated environment. Many of the franchising provisions were relaxed, with Congress' stated intent being to rely on the marketplace and competitive market forces to the maximum extent possible to achieve expanded program offerings, reasonable prices, and good customer service. However, competition among cable service providers has not increased in most markets, especially smaller ones, and the rates for cable services have generally outpaced inflation.

FCC Standards

Despite the relaxed regulatory environment, federal standards do remain in several areas, giving localities some leverage in managing the performance of cable television franchisees. Of particular note are the following standards and authorities:

- Localities can grant one or more franchises; franchises may not be exclusive.
- Prices for the most basic tier of service, often referred to as "broadcast" service, are regulated according to an FCC formula.
- Franchise fees up to 5% of the gross revenues from cable television service may be collected by the locality.
- Customer services standards that have been defined by the FCC may be applied and enforced by the locality, including telephone call answering performance, installation responsiveness, and service repair responsiveness.

A thorough synopsis of federal regulation and FCC oversight can be found in a Fact Sheet published by the FCC in June, 2000 at: <http://www.fcc.gov/mb/facts/csgen.html>.

III. Overview of Franchise Renewal Processes

Cable franchise renewals can be obtained by following either a formal or an informal process. Cable operators and localities usually seek an informal process,

which allows for more flexibility in negotiation and is usually less costly. Regardless of which process is followed, the renewal process commences approximately three years before the expiration of the existing franchise with the written notification by the cable operator to the municipality of its desire to renew. Adelphia notified Lynchburg in March, 2000 of its desire to renew and to use the informal process.

Formal Process

The formal process is a structured approach, laid out in FCC guidelines, for evaluating the past performance of the cable provider, for evaluating the future cable-related needs of the community, for developing a request for proposals, and for receiving and accepting proposals. Since Lynchburg and Adelphia are following an informal process, further discussion of this process is not addressed in this paper.

Informal Process

In the informal process, the locality gathers information regarding the community's needs and interests and regarding the performance of the cable provider. The locality also assesses whether the cable provider has complied with the existing franchise, evaluates the quality of the services provided, and assesses the financial, legal, and technical capabilities of the cable provider. Written proposals for a new franchise are prepared, and the locality and the cable operator then negotiate a final franchise agreement. At any point in the informal process, either party may request that the informal process be abandoned and that the formal process be followed.

IV. Local Governments' Abilities and Limitations

The major regulatory powers and restrictions on local governments are as follows:

What Local Governments May Do

Localities can franchise any company desiring to provide cable television service. They may require that capacity, facilities, and financing be provided for Public, Educational, and Governmental access channels. They may regulate the rates for the most basic level of service (after the locality is certified by the FCC to do so), charge franchise fees, enforce customer service standards, and require upgrades to the cable system. They may also require participation in a local Emergency Alert System (EAS) and enforce FCC standards regarding EAS.

What Local Governments May Not Do

Localities cannot require the provision of specific programming. They cannot regulate rates, other than those for the equipment and services needed to deliver the most basic level of service, or customer equipment compatibility. They cannot regulate telecommunications services as part of a CATV franchise. They also cannot require the use of a specific technology.

The above is by no means an exhaustive description of the areas under a locality's or a cable provider's control. Federal guidelines exist for topics such as: "must carry" channels, transfers of franchises, subscriber privacy, and system design. Resources describing these and other ancillary topics are available from City staff.

V. Status of Adelphia Franchise Renewal in Lynchburg

Although the City and Adelphia have mutually agreed to follow the informal renewal process, elements of the formal process have been incorporated into the City's preparation, resulting in a hybrid approach to reaching an agreement.

Background

Adelphia's franchise in Lynchburg was originally to expire in March, 2003. After receiving notice from Adelphia in March, 2000 regarding their desire to renew their franchise, the City contracted with Municipal Services Associates, Inc. (MSA) to assist in the franchise renewal. A plan was developed to perform several assessments regarding the community's needs, the City's educational and governmental requirements, and Adelphia's technical and financial capabilities, culminating in the anticipated beginning of negotiations in mid-2002 and the signing of a new franchise by December, 2002.

However, Adelphia declared bankruptcy in June, 2002. Because of the City's concerns about Adelphia's financial capability and ongoing customer service issues, the City decided to defer negotiations until these concerns could be analyzed. A 12-month franchise extension was granted by City Council, extending the franchise term to March, 2004. A second extension was granted by City Council in early 2004, with the expiration now set at December 31, 2004.

In the spring of 2004, it was determined that Adelphia was taking steps to address their customer service issues. In addition, it appeared that Adelphia would emerge from bankruptcy either under its own management and reorganization plan, or as an entity purchased by another cable provider. As a result, the City restarted the renewal process.

Needs Assessments

Between mid-2000 and mid-2001, a written survey of a random sample of citizens was conducted, two public forums were conducted to capture citizen input, and several meetings with City and Schools staff were conducted to identify their needs. Another public forum was also conducted in March, 2004 in an attempt to validate the findings from the first forums and survey, since a significant amount of time had elapsed. The following are the issues identified that seem to be of most interest and importance:

- Rates – price increases have been frequent and large.
- Programming mix –subscribers desire to choose their channels a la carte.

- (As noted in prior sections of this paper, the above two items are not within the control of the franchising locality.)
- City Council meetings – broadcast quality is poor.
- Customer service – callers cannot get through or are frequently put on hold.
- Public and Governmental Access Channel – production studio is antiquated, and there is a desire to establish a separate governmental channel. (Public and Governmental Access currently share channel 7.)

Technical Review

A technical inspection of Adelphia's system was conducted by a qualified engineer in January, 2002. Overall, the system passed most tests. However, many homes were identified with improper electrical grounding. A corrective action plan was put in place to require Adelphia to inspect every customer location for proper grounding, and to make repairs, if required. This process is still ongoing. Over 18,000 homes have been inspected, with repairs being made in about 8% of the cases.

Financial Review

A financial review was conducted by an accounting firm in early 2002 to evaluate Adelphia's compliance in the payment of franchise fees due the City. Adelphia was deemed to be in compliance in almost all areas. Two minor revenue areas were identified as possibly containing discrepancies. However, the amounts in question were relatively small, equating to less than 5% of Adelphia's annual franchise fee payments. In addition, almost all of the amounts in question pre-dated Adelphia's bankruptcy filing in June, 2002, and under the bankruptcy procedures, the City was prevented from seeking payment for amounts pre-dating the bankruptcy filing date.

Other Efforts

Adelphia has signed new franchise agreements with the cities of Charlottesville and Danville within the last seven months. Both of these agreements have been reviewed by City staff and MSA.

The City also updated its local ordinance regarding CATV in June, 2002. The ordinance was updated to better reflect the current regulatory environment, as well as changes in technology.

Regional Cooperation

The City has had informal discussions with officials from Amherst Co. and the Town of Amherst regarding coordinating franchise renewal discussions in some way. (Both Amherst Co. and the Town are served by Adelphia, and are, in fact, connected to the same physical system as Lynchburg's.) The primary areas of interest for coordination are in the timing of franchise expirations and in the requirements and timing for system upgrades. The City has agreed to share its negotiating positions to help facilitate this coordination.

VI. Anticipated Franchise Renewal Time Line

The current view of the time line for renewal is as follows:

July – August, 2004	City and Schools finalize draft franchise agreement to cover all items identified in the various needs assessments
August, 2004	Present draft franchise document to Adelphia
September – October	Adelphia review and offer comments
November – December	Conduct negotiations
December 31, 2004	Current franchise agreement expires.

The development of the draft franchise agreement by City and Schools staff will be coordinated by Mike Goetz – Director, Information Technology. A support team consisting of Bonnie Svrcek – Deputy City Manager, Walter Erwin – City Attorney, JoAnn Martin – Director, Communications and Marketing, Treney Tweedy – Public Information Officer for Lynchburg City Schools, and Stuart Chapman – Municipal Services Associates will assist in developing and refining City and Schools positions in the negotiations. City Council will be kept informed throughout the process, and may be called upon for guidance in negotiations as issues are discussed and prioritized.

VII. Major Negotiation and Renewal Issues

As discussed above, numerous activities and ongoing citizen feedback have generated issues to be covered in the franchise renewal negotiations. The highest priority issues are described below:

Construction and Physical Plant

- Require an upgrade to the entire system, increasing bandwidth and channel capacity.
- Adopt standards for the timeliness of repairs.
- Require that temporary connections be made permanent in a timely manner.

Customer Service

- Adopt standards for call answering to improve responsiveness.
- Define penalties for not meeting customer service or construction standards.

Public, Education, and Government Access (PEG) Programming

- Obtain resources, preferably through a PEG capital fee, to modernize and maintain production and broadcast equipment in the Public and Government access channel studio. If adopted, this fee would likely be passed through to customers and may be explicitly shown on the customers' bills.
- Upgrade cameras and broadcast equipment to improve the quality of broadcasts from City Council Chambers.

Financial and Pricing

- Provide a senior citizen discount.
- Request some level of reimbursement of City's franchise renewal costs.

Other

- Require that Adelphia maintain leading-edge technology in the system.

Additional issues have been identified and will be included in renewal negotiations. A full list of issues, as well as a working draft of the new franchise agreement, is available from City staff.

VIII. Status of Adelphia Bankruptcy

Adelphia declared Chapter 11 bankruptcy in June, 2002. Its founders and corporate leaders, primarily the family of John Rigas, face criminal and civil charges that they looted the company for personal benefit. They have been accused of taking millions of dollars in off-the-books loans for personal uses. A jury recently found Mr. Rigas and his son, Timothy, guilty of bank and securities fraud.

The Rigas family was removed from the corporate board of directors and from their management duties, and a new management team was put in place. This management team is in the final stages of developing a plan of reorganization to bring the company out of bankruptcy as a viable, operating entity. However, a large bloc of stockholders, dissatisfied with the restructure plans, have forced Adelphia to consider the sale of its assets to other buyers, primarily existing large cable TV companies. Adelphia is now actively seeking a buyer for its cable systems across the country.

The outcome of these proceedings is still very much in doubt. Both the proposed corporate restructuring plan and the sale of the company are being pursued in parallel under the review of a federal bankruptcy court. It is unclear when the bankruptcy will be resolved.

VIII. Conclusion

Adelphia has indicated to the City its desire to move forward with franchise renewal negotiations and appears to be equipped to renew franchises, as evidenced by their recent renewals in Charlottesville and Danville. With the current franchise expiring on December 31, 2004, it will be a challenge to complete negotiations for a new franchise within this time frame. Every effort will be made by City staff to complete negotiations without delay, while attempting to achieve satisfactory resolution to the negotiation issues mentioned in this paper.